



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2013

Mr. G. Brian Garrison
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2013-18373

Dear Mr. Garrison:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 503067.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for any criminal complaints made by a named individual against the Glen Heights Police Department to the Public Integrity Unit during July 2013, a specified prosecution report, and four police dash camera video recordings entered into evidence in a specified hearing. You claim some of the submitted information is excepted from disclosure under sections 552.119 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the submitted information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release such information in response to this request.

Next, we note you have not submitted any criminal complaints made by the named individual against the Glen Heights Police Department to the Public Integrity Unit. To the extent information responsive to this portion of the request existed and was maintained by the district attorney's office on the date the district attorney's office received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental

body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302.

Section 552.119 of the Government Code provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Id. § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. After review of your arguments, we find you have not demonstrated, and it is not apparent from our review of the responsive information, that release of the information at issue would endanger the life or physical safety of the peace officers depicted. Therefore the district attorney's office may not withhold any of the submitted responsive information under section 552.119 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]" See *id.* § 552.130(a)(1)-(2). The district attorney's office must withhold the information we have marked and any discernible or audible motor vehicle record information in the submitted recordings under section 552.130 of the Government Code.

We note some of the remaining information is subject to sections 552.101 and 552.1175 of the Government Code.¹ Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find the information we have indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. See Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). We have indicated information pertaining to a peace officer not held in an employment capacity that may be subject to section 552.1175. Accordingly, if the individual whose information we have indicated elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), the district attorney's office must withhold the information we have indicated under section 552.1175 of the Government Code. If the individual does not elect to restrict access to the information pertaining to him in accordance with section 552.1175(b), the district attorney's office may not withhold the information at issue under section 552.1175 of the Government Code.

In summary, the district attorney's office must withhold (1) the information we have marked and any discernible or audible motor vehicle record information in the submitted recordings under section 552.130 of the Government Code, (2) the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) the information we have indicated under section 552.1175 of the Government Code, if the individual whose information we have indicated elects to restrict access to the

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information pertaining to him in accordance with section 552.1175(b) of the Government Code. The district attorney's office must release the remaining responsive information.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 503067

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).